IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9753 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAFIK HASAN RAJ

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9753 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MRS HANSABEN PUNANI, AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/12/2001

ORAL JUDGEMENT

By way of this Special Civil Application under

Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 22-9-2001 passed by the District Magistrate, Vadodara, in exercise of powers conferred by Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Mr.H.R.Prajapati, learned advocate for the petitioner has argued that in ground (o) of the petition, he has specifically raised the contention that though the detaining authority has relied upon bail application and order passed by the Court below while passing the detention order, copies of the same have not been supplied to the detenu. Drawing my attention towards para 8 of the grounds of detention, he has contended that the authority has categorically referred to and relied upon the same, but copies of the same have not been supplied to the detenu. Taking me through page No.21, which is an index supplied by the authority along with the detention order running from Sr.Nos.1 to 28, and going through the same one by one, he has contended that no copy has been supplied by the authority to the detenu and, hence, he has demanded the same by way of representation dated 18-10-2001 and though said representation has been received by the authority, they have not fully met the demands. He has also raised the contention that while passing the order, the authority has taken into consideration that if the petitioner will be detained, then there is likely of moving application for bail and it is also likely that the detenu may be released on bail which aspect has not been considered by the detaining authority and, therefore, there is non-application of mind on the part of the detaining authority and, hence, continued detention is illegal. He has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

He has submitted that the petitioner is a co-detenu of an

offence wherein another detenu-Kuldipsing @ Chhotu Jogindarsing Jat has been released by this Court in Special Civil Application No.8876 of 2001 by the judgment and order dated 06-12-2001 and hence, present detenu should also be granted same benefit.

4. Though affidavit has been filed by Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, above contention raised by the learned advocate for the detenu has not been properly dealt with by the authority and hence, there is non-application of mind on the part of detaining authority in passing the detention order and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. Since a co-detenu has been released by this Court, on the ground of parity also, the detenu is entitled to be released.

5. The petition is allowed. The impugned order of detention dated 22-9-2001 passed against the detenu is hereby quashed and set aside. The detenu Rafik Hasan Raj is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)
radhan/